

APPENDIX

Supreme Court, U. S.  
FILED

JUN 2 1978

MICHAEL ROSAK, JR., CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1977

No. 77-5992

FRANK O'NEAL ADDINGTON,

*Appellant*

—v.—

THE STATE OF TEXAS

ON APPEAL FROM THE SUPREME COURT  
OF THE STATE OF TEXAS

DOCKETED JANUARY 6, 1978  
PROBABLE JURISDICTION NOTED APRIL 17, 1978

In the Supreme Court of the United States

OCTOBER TERM, 1977

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FRANK O'NEAL ADDINGTON,

—v.—

*Appellant*

THE STATE OF TEXAS

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OF THE STATE OF TEXAS

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## CHRONOLOGICAL LIST OF SIGNIFICANT DATES

(in Lieu of Docket Entries)

- January 7, 1976 Petitioner The State of Texas' Petition for Indefinite Commitment of Frank O'Neal Addington filed in Probate Court of Galveston County, Texas
- February 2, 1976 Commencement of Jury Trial
- February 6, 1976 Respondent's Request for Jury Instructions filed; Order of Court denying same made and entered
- February 6, 1976 Respondent's Objection to Charge filed; Order of Court Denying same made and entered.
- February 6, 1976 Charge of the Court, together with the Verdict and Certificate of the Jury, filed
- February 6, 1976 Judgment of Court for Indefinite Commitment made and entered
- April 22, 1976 Cause docketed in Court of Civil Appeals for the 14th Supreme Judicial District of the State of Texas
- October 18, 1976 Appellant Frank O'Neal Addington's Brief filed in Court of Civil Appeals
- November 12, 1976 Appellee The State of Texas' Brief filed in Court of Civil Appeals
- November 29, 1976 Oral Argument had in Court of Civil Appeals
- January 6, 1977 Opinion and Judgment of Court of Civil Appeals rendered, reversing and remanding judgment of trial court
- March 2, 1977 Petitioner The State of Texas' Application for Writ of Error filed in Supreme Court of the State of Texas
- March 16, 1977 Respondent's Reply to Application for Writ of Error filed in Supreme Court of the State of Texas

October 12, 1977 Opinion and Judgment of the Supreme Court of the State of Texas rendered, reversing judgment of Court of Civil Appeals and affirming judgment of trial court.

December 30, 1977 Petitioner Frank O'Neal Addington's Notice of Appeal to United States Supreme Court filed in Texas Supreme Court

IN THE PROBATE COURT OF  
GALVESTON COUNTY, TEXAS

THE STATE OF TEXAS FOR THE BEST INTEREST  
AND PROTECTION OF

FRANK O'NEAL ADDINGTON  
AS A MENTALLY ILL PERSON

PETITION FOR INDEFINITE COMMITMENT—  
Filed January 7, 1976

Now comes Jerome Jones, an adult person, a resident of Galveston County, Texas, hereinafter called Petitioner, and respectfully presents this petition for indefinite commitment to a mental hospital for the hereinafter named Patient, and respectfully shows the Court upon information and belief the following:

1. That Frank O'Neal Addington, hereinafter called Patient, is hospitalized, resides in or is found in this County.

2. That by order of the Probate Court of Galveston County, Texas, in Cause No. 32,948, Patient has been under observation and/or treatment in the Austin State Hospital for at least sixty days and that said order for temporary commitment was entered within twelve months immediately preceding the filing of this petition.

3. That the address of the Patient is 209 Old Bayou Dr., Dickinson, Tx.

4. That the name and address of Patient's spouse, parents, children, brothers, sisters and legal guardian are as follows:

Father J. D. Addington 209 Old Bayou Dr.,  
Dickinson, Tx.

5. That Petitioner's address is Galveston County Courthouse, Galveston, Tx.

6. That Petitioner's relationship to Patient is Judge.

7. That a statement of Petitioner's interest in this proceeding is Judge.

9. That Patient is not charged with a crime.

10. That Patient is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

11. That attached to and accompanying this petition is a certificate of medical examination by a physician who has examined Patient within the fifteen days immediately preceding the filing of this petition, stating in the opinion of the examining physician that Patient is mentally ill and requires hospitalization in a mental hospital.

THEREFORE, Petitioner prays this Honorable Court to set a date and place for a hearing on this petition; that a copy of this petition and notice of hearing be personally served on Patient; that a copy of this notice and petition be sent by registered mail to the guardian or responsible relative of Patient; that an attorney ad litem be appointed to represent Patient; that it be determined whether or not Patient is mentally ill and if so whether Patient requires hospitalization in a mental hospital for his own welfare and protection, and for such other orders as may be necessary and to the best interest of Patient.

DATED this the 7th day of January 1976.

/s/ Jerome Jones  
Petitioner

[Jurat Omitted in Printing]

IN THE PROBATE COURT  
GALVESTON COUNTY, TEXAS

No. 32,948

IN RE: FRANK O'NEAL ADDINGTON

REQUEST FOR JURY INSTRUCTIONS—  
Filed February 6, 1976

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES FRANK O'NEAL ADDINGTON, by and through his attorney of record Martha L. Boston, and moves the Court that, at the close of the evidence and before the jury retires to consider the evidence, the jury be given the following instructions concerning the law which they are to apply in deciding the above entitled and numbered cause:

Frank O'Neal Addington is alleged by Petition for Indefinite Commitment to be mentally ill to the extent that he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

1. To find that Frank O'Neal Addington should be committed to a mental hospital, you must find two things:

A. That he is mentally ill, and

B. That he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others. A finding that Frank O'Neal Addington is mentally ill will not, by itself, justify his commitment.

2. A mentally ill person is one whose mental health is substantially impaired.

3. In order to find that Frank O'Neal Addington "requires" hospitalization in a mental hospital, you must find that commitment to a mental hospital is the only available means by which his own welfare and protection or the protection of others may be achieved.



4. In order to find that Frank O'Neal Addington requires hospitalization in a mental hospital, you must find that he lacks the capacity to make a reasoned choice about whether or not to be hospitalized. If you find that Frank O'Neal Addington is capable of reasonably choosing whether or not to be hospitalized, you must find that he does not require hospitalization.

5. In order to find that Frank O'Neal Addington requires hospitalization in a mental hospital, you must find that the hospitalization he is to receive will be beneficial to his mental health.

6. In order to find that Frank O'Neal Addington requires commitment "for his own welfare and protection," you must find that hospitalization is necessary to protect him from immediate and serious bodily harm. To find harm of this character you must find either

A. that Frank O'Neal Addington will suffer self-inflicted injury which will result in loss of his life or in serious bodily injury, or

B. that Frank O'Neal Addington is unable to provide for his basic personal needs of survival such as food, clothing and shelter. A finding that hospitalization would be for Frank O'Neal Addington's welfare is insufficient unless you also find that hospitalization is required for his protection.

7. In order to find that Frank O'Neal Addington requires commitment for "the protection of others," you must find that unless he is hospitalized, he will cause immediate serious bodily injury to someone other than himself.

8. To justify commitment, it is necessary that you find that hospitalization is required either "for his own welfare and protection (as defined in #6 above) or "for the protection of others" (as defined in #7 above).

9. In cases where a person may be deprived of his liberty, the burden of proof is upon the State. Frank O'Neal Addington is presumed not to require hospitalization until his mental illness and the need to protect him or others are established beyond a reasonable doubt; and in this case, if you have a reasonable doubt as to Frank O'Neal Addington's requiring hospitalization for his welfare and protection or for the protection of others, you will find that he does not require hospitalization.

10. You are instructed not to allude to, comment on, discuss or consider the failure of Frank O'Neal Addington to testify in this case, nor will you refer to or discuss any matter not before you in evidence. No juror may lawfully relate to the others any fact or circumstance of which he may have or claim knowledge or information and not introduced in evidence.

11. The Petition for Indefinite Commitment is the pleading upon which Frank O'Neal Addington is sought to be committed. It cannot be considered as a fact or circumstance against him, and you will not discuss it as such.

12. You are the exclusive judges of the facts proved and of the credibility of the witnesses, and of the weight to be given their testimony, but you are bound to receive the law from the Court, which is herein given to you, and be governed thereby.

Respectfully submitted,

/s/

Martha L. Boston  
BOSTON & BROWN  
1305 San Antonio  
Austin, Texas 78701  
Attorney for  
Frank O'Neal Addington

February 6, 1976  
Request for Jury Instruction denied.  
Jerome Jones, Judge

IN THE PROBATE COURT OF  
GALVESTON COUNTY, TEXAS

No. 32,948

IN RE: FRANK O'NEAL ADDINGTON

RESPONDENT'S OBJECTION TO CHARGE—  
Filed February 6, 1976

Respondent objects to the omission of the following instructions in the court's charge to the jury:

I.

A. In order to find that Frank O'Neal Addington requires hospitalization in a mental hospital for any reason, you must find that commitment to a mental hospital is the only available means by which his own welfare and protection or the protection of others may be achieved.

B. In order to find that Frank O'Neal Addington requires hospitalization in a mental hospital, you must find that he lacks the capacity to make a reasoned choice about whether or not to be hospitalized. If you find that Frank O'Neal Addington is capable of reasonably choosing whether or not to be hospitalized, you must find that he does not require hospitalization.

C. In order to find that Frank O'Neal Addington requires hospitalization in a mental hospital, you must find that the hospitalization he is to receive will be beneficial to his mental health.

D. In order to find that Frank O'Neal Addington requires hospitalization "for his own welfare and protection" you must find that hospitalization is necessary to protect him from immediate and serious bodily harm. To find harm of this character you must find both

1. That Frank O'Neal Addington is unable to provide for his basic personal needs of survival such as food, clothing and shelter, and

2. That Frank O'Neal Addington will suffer self-inflicted injury which will result in loss of his life or in serious bodily injury. A finding that hospitalization would be for Frank O'Neal Addington's welfare is insufficient unless you also find that hospitalization is required for his protection.

E. In order to find that Frank O'Neal Addington requires commitment for "the protection of others" you must find that unless he is hospitalized, he will cause immediate serious bodily injury to someone other than himself.

F. In cases where a person may be deprived of his liberty, the burden of proof is upon the state. Frank O'Neal Addington is presumed not to require hospitalization for any reason until his mental illness and the need to protect him or others are established by the state.

G. The standard of proof in this case is beyond a reasonable doubt. If you have a reasonable doubt as to Frank O'Neal Addington's requiring hospitalization for his welfare and protection or for the protection of others, you will find that he does not require hospitalization.

H. You are instructed not to allude to, comment on, discuss or consider the failure of Frank O'Neal Addington to testify in this case.

I. The petition for indefinite commitment is the pleading upon which Frank O'Neal Addington is sought to be committed. It cannot be considered as a fact or circumstance against him, and you will not discuss it as such.

J. You are the exclusive judges of the facts proved and of the credibility of the witnesses, and of the weight to be given their testimony, but you are bound to receive the law from the court, which is herein given to you, and be governed thereby.

II.

Respondent objects to the omission of the following special issues:

A. Do you find that at least two (2) physicians who have examined Frank O'Neal Addington within the fif-

teen (15) days immediately preceding this hearing testified at this hearing?

B. Do you find that Frank O'Neal Addington has been under observation and/or treatment in the Austin State Hospital for at least sixty (60) days pursuant to an order of temporary hospitalization entered within the twelve (12) months immediately preceding the filing of the petition for indefinite commitment?

1. If you find that the state has not presented evidence that by order of temporary hospitalization, Frank O'Neal Addington was committed to Austin State Hospital, you will find that he has not been so hospitalized.

2. If you find that the state has not presented evidence that the order of temporary hospitalization was a valid order, you will find that Frank O'Neal Addington has not been so hospitalized.

Respectfully submitted,

/s/ \_\_\_\_\_  
Martha L. Boston  
1305 San Antonio  
Austin, Texas 78701

Attorney for  
Frank O'Neal Addington

February 6, 1976

The Respondent's objections herein submitted are denied.

Jerome Jones, Judge

IN THE PROBATE COURT OF  
GALVESTON COUNTY, TEXAS

No. 32,948

THE STATE OF TEXAS FOR THE BEST INTEREST AND  
PROTECTION OF FRANK O'NEAL ADDINGTON

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you on special issues which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom together with the law as given you by the court. In your deliberations you will not consider or discuss anything that is not represented by the evidence in this case.

3. You must not decide who you think should win, and then try to answer the question accordingly. Simply answer the question, and do not discuss nor concern yourselves with the effect of your answer.

4. You will not decide the issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average.



5. Your answer must be unanimous or by the vote of 5 members of the jury. You will not, therefore, enter into an agreement to be bound by a majority of any vote other than a unanimous vote of all jurors or by the vote of 5 members of the jury. If less than the original 6 render a verdict, the verdict must be signed by each juror concurring therein.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and judge. If it should be found that you have disregarded any of these instructions it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The foreman or any other juror who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

This case is presented under the provisions of the Texas Mental Health Code to determine whether Frank O'Neal Addington is mentally ill and requires hospitalization in a mental hospital for his own protection or the protection of others.

The following two issues are submitted to you for your deliberation and answer in the above case:

1. Based on clear, unequivocal and convincing evidence, is Frank O'Neal Addington mentally ill?
2. Based on clear, unequivocal and convincing evidence, does Frank O'Neal Addington require hospitalization in a mental hospital for his own welfare and protection or the protection of others?

As used in the above issue, mentally ill means a mental condition which is such as to substantially impair the person's mental health.

/s/ \_\_\_\_\_  
Jerome Jones  
Judge

## VERDICT

We, the Jury, find in response to the above issues submitted to us as follows:

1. In response to the first issue, we find Frank O'Neal Addington is mentally ill.
2. In response to the second issue, we find that Frank O'Neal Addington does require hospitalization in a mental hospital for his own welfare and protection or the protection of others.

/s/ \_\_\_\_\_  
Carl E. Scherer  
Foreman

After you retire to the jury room, you will select your own foreman. The first thing the foreman will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

/s/ \_\_\_\_\_  
Jerome Jones  
Judge presiding

## CERTIFICATE

We, the jury, have answered the above and foregoing special issues as herein indicated, and herewith return same into court as our verdict.

(To be signed by the foreman if unanimous)

\_\_\_\_\_  
Foreman

(To be signed by those rendering the verdict if not unanimous)

/s/ \_\_\_\_\_ /s/ \_\_\_\_\_  
Carl E. Schrerer, Jr. Mary F. Golden

/s/ \_\_\_\_\_ /s/ \_\_\_\_\_  
Lois O. Thonson Blanche L. Flynn

/s/ \_\_\_\_\_  
Mabel L. Landers

IN THE PROBATE COURT OF  
GALVESTON COUNTY, TEXAS

No. 32,948

THE STATE OF TEXAS FOR THE BEST INTEREST AND  
PROTECTION OF FRANK O'NEAL ADDINGTON  
AS A MENTALLY ILL PERSON

JUDGMENT—Filed February 6, 1976

On this the 6th day of February, 1976, came on to be heard the petition of Jerome Jones, filed with the Clerk of this Court on the 7th day of January, 1976, alleging that Frank O'Neal Addington hereinafter termed Patient, is mentally ill and requires hospitalization in a mental hospital for Patient's own welfare and the protection of others.

It appearing to the Court that all necessary parties have been served with a copy of said petition and written notice of the time and place of the hearing and Martha Boston, Attorney for Patient, announced ready and appeared for and in behalf of Patient and no waiver of jury having been filed in this cause, and a jury of six good and lawful men of Galveston County, Texas, were duly impaneled and sworn according to law, who after hearing the petition, the evidence, including the testimony of B. W. Henry and J. R. Markette, both physicians licensed to practice medicine in the State of Texas, or employed by a state mental hospital or by an agency of the United States, and each having a license to practice medicine in any state of the United States, and having examined patient within fifteen days immediately preceding this hearing, and after receiving the charge of the Judge, the following special issues were submitted to the jury, to-wit:

- 1) Based on clear, unequivocal and convincing evidence, is Frank O'Neal Addington mentally ill?
- 2) Based on clear, unequivocal and convincing evidence, does Frank O'Neal Addington require hos-

pitalization in a mental hospital for his own welfare and protection or the protection of others?

WHEREUPON the jury, after due deliberation had, came and returned unto the Court the following verdict and answers to the special issues submitted, to-wit:

We, the jury, in response to the special issues submitted to us by the Court, find the following special verdict, to-wit:

- 1) In response to the first issue, we find that Frank O'Neal Addington is mentally ill.
- 2) In response to the second issue, we find that Frank O'Neal Addington does require hospitalization in a mental hospital for his own welfare and protection or the protection of others.

/s/ \_\_\_\_\_  
Carl E. Schrerer  
Foreman

It is, therefore, adjudged, ordered and decreed that Patient is mentally ill, requires hospitalization in a mental hospital for his own welfare and protection or the protection of others and is mentally incompetent and is hereby committed for an indefinite period as a patient to Austin State Hospital.

It is further ordered that the Clerk of this Court issue a writ of commitment in duplicate to the Sheriff of this county authorizing and commanding said Sheriff to take charge of Patient and to transport to the above designated mental hospital.

The head of the above named hospital, upon receiving a copy of the writ of commitment and admitting Patient, shall give the person transporting Patient a written statement acknowledging acceptance of Patient and of any personal property belonging to Patient and shall file a copy with the Clerk of this Court.

It is further ordered that the applicant in this cause, attorney for Patient, examining physicians, and the clerk of this court, cause to be prepared a property and financial statement and a case history pertaining to patient, and that a copy of said statement be included in the transcript of these proceedings to be sent to the Board for Texas State Hospitals and Special Schools, and a copy to be included in a transcript of these proceedings to be sent to the head of the hospital to which patient is committed.

The Clerk of this Court is further ordered to prepare two certified transcripts of the proceedings in this cause and to send one to the Board for Texas State Hospitals and Special Schools and one to the head of the hospital to which Patient is committed.

/s/ \_\_\_\_\_  
Jerome Jones  
Judge  
Galveston County, Texas

## IN THE COURT OF CIVIL APPEALS OF TEXAS

No. 7910

FRANK O'NEAL ADDINGTON, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

OPINION—January 6, 1977

This is an appeal from an indefinite commitment of the appellant to the Austin State Hospital under the provisions of *Sec. 52(b)* of the *Texas Mental Health Code*, *TEX. REV. CIV. STAT. ANN. Art. 5547 (1958)*.

The fact structure of the case which we review is almost a mirror image of the facts recited by Justice Shannon in the opinion in *Turner v. State*, 543 S.W. 2d 543 (Tex. Civ. App.—Austin, application pending), not yet reported except in 2 T.C.R. 92. For this reason, we omit any factual resume underlying the single question which we will confront in this opinion.

Appellant has vigorously urged, in the brief and in oral argument, that the trial court erred in overruling his objection to the charge because it did not require the State to prove the factual basis for the confinement beyond a reasonable doubt. Just as in *Turner*, *supra*, the Court submitted such issues requiring the State to establish its right to affirmative answers thereto only by "clear and convincing" evidence.

We are in complete agreement with the rationale and the result reached in *Turner*, and do not find it necessary to write further on the question. In making this determination, we fully realize that the Tenth Court of Civil Appeals has held to the contrary. See *Powers v. State*, 543 S.W. 2d 194 (Tex. Civ. App.—Waco 1976, application pending), not yet reported except in 2 T.C.R. 31.

There are other points brought forward; but, until we have an authoritative answer to the question of the

quantum of proof required, we do not deem it either advisable or necessary to pass upon them.

The judgment of the trial court is reversed and the cause is remanded.

REVERSED and REMANDED.

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 Quentin Keith  
Justice

Opinion delivered January 6, 1977

Justice Stephenson not participating.



## IN THE COURT OF CIVIL APPEALS OF TEXAS

No. 7910

FRANK O'NEAL ADDINGTON

vs.

THE STATE OF TEXAS

JUDGMENT RENDERED—January 6th, 1977

This case came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of the court that there was error in the judgment of the court below, it is, therefore, considered, adjudged and ordered that the judgment of the court below be reversed and remanded. A certified copy of the judgment shall be certified below for observance.

A true copy of the judgment to be entered, I hereby certify.

Joe A. Hulan, Clerk

IN THE SUPREME COURT OF TEXAS  
FROM GALVESTON COUNTY  
NINTH CIRCUIT

No. B-6597

STATE OF TEXAS, PETITIONER

v.

FRANK O'NEAL ADDINGTON, RESPONDENT

PER CURIAM—October 12, 1977

This case involves the proper standard of proof that is required in indefinite commitment cases under the provisions of the Texas Mental Health Code.<sup>1</sup> Frank Addington was committed to the Austin State Hospital for an indefinite period of time after the jury found that he was mentally ill and required hospitalization for his own welfare and protection, as well as for the protection of others. The trial judge instructed the jury that the State's burden was to prove each special issue by "clear and convincing evidence." The court of civil appeals reversed and held that the proper standard of proof was "beyond a reasonable doubt." 546 S.W. 2d 105.

The holding in the instant case conflicts with this court's decision in *State v. Turner*, — S.W. 2d —, 20 Tex. Sup. Ct. J. 510 (Sept. 27, 1977). The facts in these two cases are very similar. In both cases, the jury was instructed that the proper standard of proof was that of clear and convincing evidence. The courts of civil appeals reversed the cases because they held that the stricter standard of beyond a reasonable doubt was required. In *Turner*, this court held that preponderance of the evidence was the proper standard of proof to be used in civil commitment cases. For the reasons expressed in *Turner*, we hold that it was error for the court of civil appeals in this case to require the State to prove

<sup>1</sup> TEX. REV. CIV. STAT. ANN. art. 5547 (1958).

each issue beyond a reasonable doubt. Since the jury found Addington to be mentally ill under a stricter standard than is required, the instruction given does not constitute harmful error.

Pursuant to Texas Rule of Civil Procedure 483, we grant the writ of error and, without hearing oral argument, reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

OPINION DELIVERED: October 12, 1977

IN THE SUPREME COURT OF TEXAS  
FROM GALVESTON COUNTY  
NINTH DISTRICT

No. B-6597

THE STATE OF TEXAS

v.

FRANK O'NEAL ADDINGTON

JUDGMENT—October 12, 1977

This day came on to be heard application of petitioner for writ of error to the Court of Civil Appeals for the Ninth Supreme Judicial District having been duly considered, because it is the opinion of the Court that under Rule 483, Texas Rules of Civil Procedure, the application for writ of error is granted, and without hearing oral argument in the case, it is adjudged, ordered and decreed that there was error in the judgment of the Court of Civil Appeals which reversed and remanded the judgment of the trial court. Therefore, it is ordered that the judgment of the Court of Civil Appeals be, and hereby is, reversed and set aside, and the judgment of the trial court be, and thereby is, affirmed.

It is further ordered that respondent, Frank O'Neal Addington, and his sureties, J. M. Winter and L. G. Becknell both of AAA Bonding Agency, pay all costs expended and incurred in this Court and the Court of Civil Appeals, that petitioner, The State of Texas, have and recover of and from respondent, Frank O'Neal Addington, and his sureties, J. M. Winter and L. G. Becknell, all costs expended and incurred by it in said courts, and that this decision be certified to the Probate Court of Galveston County, Texas for observance.

\* \* \* \*  
(Per Curiam Opinion)

\* \* \* \*

## SUPREME COURT OF THE UNITED STATES

No. 77-5992

FRANK O'NEAL ADDINGTON, APPELLANT

v.

TEXAS

ON CONSIDERATION of the motion of appellant for leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

April 17, 1978

## SUPREME COURT OF THE UNITED STATES

No. 77-5992

FRANK O'NEAL ADDINGTON, APPELLANT

v.

TEXAS

APPEAL from the Supreme Court of Texas.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

April 17, 1978